

JUDICIAL CONDUCT REPORTER



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Center for Judicial Ethics

State judicial discipline in 2016

In 2016, 11 judges (or former judges in five cases) were removed from office (a \$1,000 fine was also imposed in one of the removal cases). (See "[Removal cases in 2016](#)," *infra*.) In addition, one judge was ordered to retire immediately due to misconduct and never to run for judicial office again, one judge was retired due to permanent disabilities, and 13 judges or former judges resigned or retired in lieu of discipline pursuant to public agreements with conduct commissions. Two former judges were permanently barred from serving in judicial office (one of those former judges was also publicly reprimanded).

In addition, 103 judges (or former judges in approximately 13 cases or judicial candidates in six cases) received other public sanctions.

There were 15 judges suspended without pay, ranging from one year to seven days. One one-year suspension was stayed on the condition that the judge commit no further misconduct; one 30-day suspension included a \$2,500 fine and reprimand; two suspensions (one of 30 days and one of 120 days) also included censures; and one three-month suspension included an order that the judge not run for re-election. There were three suspensions for six months (or 180 days in one case); the other suspensions were for four months, 90 days, one month, 15 days, and 14 days.

There were also:

- 11 public censures;
- 37 public reprimands (eight of the reprimands included conditions such as mentoring, a letter of apology, counseling, anger management, or training);
- 21 public admonishments (two of the admonishments included orders of additional education);
- Three public warnings (two of the warnings included orders of additional education);
- One informal adjustment; and
- One \$50,000 fine.

One judge was placed on supervised probation for one year with a mentorship for six months. There was one private reprimand that was made public pursuant to the judge's waiver. In two cases, there were findings that the judges violated the code of judicial conduct, but no sanction was imposed.

Further, five former judges were disbarred or had their law licenses suspended for misconduct that occurred while they were judges. Four former judicial candidates were sanctioned for their conduct during their judicial election campaigns; the dispositions were an informal adjustment, an admonishment, a censure, and a one-year suspension of the former candidate's law license, with six months stayed conditioned on his committing no additional misconduct. One judicial candidate was removed from the ballot as ineligible because he had been convicted of a misdemeanor involving moral turpitude. ★

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SAVE THE DATE

25th National College on Judicial Conduct and Ethics

Wednesday October 4 through Friday October 6, 2017 in Austin, Texas

Removal cases in 2016

From 1980 through 2015, approximately 424 judges were removed from office as a result of state disciplinary proceedings. In 2016, there were 11 removals.

The Arkansas Commission on Judicial Disability and Discipline announced the resignation and removal of two judges in 2016. See [“Corruption and cooperation in Arkansas: Top judicial ethics and discipline stories in 2016,”](#) *infra*.

“Truly egregious” conduct

Reviewing a determination of the State Commission on Judicial Conduct, the New York Court of Appeals removed a judge for (1) threatening to hold a student working in the court clerk’s office in contempt and grabbing his arm; (2) threatening on numerous occasions to hold the court clerk, other court and village employees, his co-judge, the police chief, and the mayor in contempt without basis or authority; (3) being rude and discourteous to village officials and employees; (4) imposing monetary sanctions against a legal services agency without basis or authority in law; and (5) permitting a candidate for county executive to quote him in a campaign press release. *In the Matter of Simon*, 63 N.E.3d 1136 (New York 2016). On review, the judge had conceded his misconduct but argued that he should be censured, not removed.

The Court concluded, however, that the judge’s misconduct was “truly egregious,” justifying removal.

The record reflects that, among other things, petitioner used a sanction — a tool meant to “shield” from frivolous conduct — as a “sword” to punish a legal services organization for a perceived slight in an inexcusable and patently improper way The record is also replete with instances in which petitioner used his office and standing as a platform from which to bully and to intimidate. To that end, it is undisputed that petitioner engaged in ethnic smearing and name-calling and repeatedly displayed poor temperament — perhaps most significantly, by engaging in a physical altercation with a student worker.

Those actions are representative of an even more serious problem. Petitioner — in what allegedly was a grossly misguided attempt to motivate — repeatedly threatened to hold various officials and employees of the Village of Spring Valley in contempt without cause or process. Those threats “exceeded all measure of acceptable judicial conduct” . . . , and we are particularly troubled by the testimony of one court officer, who suggested that petitioner’s threats were so common that they became “a joke.” The matter may have been a laughing one to that officer, but it was not to others.

The Court noted the judge’s claim that the Commission ignored his theory of the case — that “his motives were to protect the independence and integrity of the court from the undue influence of a corrupt mayor and improve its efficiency.” However, the Court emphasized, “[e]ven assuming the truth of that representation, the ‘means’ by which petitioner attempted to effectuate those ‘ends’ are unacceptable.”

For several examples of the judge’s statements, see [“What they said to or about judges, court staff, police officers, or public officials that got them in trouble,”](#) *infra*.

Three judges removed in Louisiana

The Louisiana Supreme Court removed three judges in 2013.

Adopting the recommendation of the Judiciary Commission, the Court removed a judge who, in two unrelated family disputes, committed numerous legal errors in issuing peace bonds; was

rude, discourteous, and undignified; allowed his staff to be rude, discourteous, and undignified; and notarized peace bond applications that were not signed in his presence. *In re Laiche*, 198 So. 3d 86 (Louisiana 2016). Two justices dissented from the removal and would have imposed a less severe sanction.

The judge failed to timely refund money paid to him for peace bonds after the bonds had expired without forfeiture; extended the terms of peace bonds beyond the six-month maximum term allowed by law; exceeded the \$1,000 maximum limit for peace bonds; charged fees in peace bond proceedings that exceeded the amount allowed by law; imposed sentences on peace bond defendants that clearly exceeded the maximum sentences allowed by the code of criminal procedure; issued peace bonds that interfered with family court proceedings; and issued peace bonds without a hearing. The Court found that the judge's legal errors were contrary to clear and determined law, egregious, and made in bad faith, violated the constitutional rights of the parties to present a defense, and constituted a pattern of legal error.

The Court agreed with the Commission that the judge continued "to be in a state of denial as to much of his misconduct and the seriousness of his actions," repeatedly attempted to cast blame on others rather than accept personal responsibility, and demonstrated "a troubling lack of appreciation for the consequences of his actions," including in his brief to the Court. The Court concluded that the judge's "faulty interpretation of the law, failure to faithfully enforce it, incompetence and gross negligence in the administration of his office, and general indifference to these failures has negatively affected many lives and casts a dark shadow on the judiciary as a whole."

No confidence

Agreeing with the recommendation of the Commission based on stipulations of material facts and conclusions of law, the Louisiana Court removed a non-lawyer judge who, in a collection case, had rendered a judgment without giving the debtors a meaningful opportunity to be heard, without requiring the creditor to present any evidence or sworn testimony, and without giving the debtors written notice of the judgment and had notarized power of attorney forms when the purported affiants (the debtors) did not sign the forms in his presence, using a notary stamp that gave the impression he was an attorney. *In re Gremillion*, 204 So. 3d 183 (Louisiana 2016).

In 2011, LenCo Finance filed a collection suit against Sharon and Joseph Smith seeking the balance due on two promissory notes. The Smiths filed an answer contesting the claim; the Smiths had been paying on their loans for years and had receipts showing some of their payments.

In August, the manager of LenCo presented the judge with the promissory notes signed by the Smiths and documents reflecting how much they owed. The manager's statement was not under oath, and none of the evidence was submitted by sworn affidavit. Without conducting a hearing or giving the Smiths an opportunity to present their evidence and testimony, the judge entered a judgment that stated the defendant "filed his Confession of Judgment, wherein he authorized and consented that judgment be entered in favor of the plaintiff," although the judge knew the Smiths contested the claim.

In October, at the request of LenCo, the judge notarized power of attorney forms purportedly signed by the Smiths, that named LenCo as attorney-in-fact to exercise any rights as "owner" to three vehicles that were collateral for the loans. None of the power of attorney forms were signed in the judge's presence, and the Smiths were not present when he notarized the forms. LenCo used these forms to repossess the Smiths' vehicles. The repossession was the first time the Smiths had received a copy of the judgement the judge had entered in August.

In his statements to the Commission, the judge indicated he believed that, if LenCo had filed suit, then the Smiths must have failed to pay off their loans. For example, he stated:

The African American community need to take care of their financial affairs. They want me to do things that is impossible. They want me to make them right when they wrong. They will — this lady was absolutely wrong. She should have paid her bill, or she had the opportunity to go and sit down with these folks and come up with something that's reasonable to pay, to pay them back. They was not going to erase the balance.

Both the debtors and the judge are African-American.

The judge stipulated that he had failed to follow clear and determined law about which there was no confusion or question, that his actions were egregious, that he was biased or prejudiced in favor of the creditor and/or against the efforts of the debtors to defend the claim, and that he lent the prestige of his judicial office to advance the private interests of the creditor. He also stipulated that it was his “routine practice” to notarize power of attorney forms for the creditor even though the people who purportedly executed the forms never appeared before him.

The Court concluded:

Given that respondent could not articulate at his appearance before the Commission the errors in this matter (other than improperly notarizing documents) and given that he does not appear to be cognizant of the existence of or the extent of his bias, we agree with the Commission that we can place no confidence in respondent's ability to change or modify his conduct in the future and thus we believe there is too high a risk that individuals, especially any defendant in a collection matter and African Americans in any matter, can receive fair trials in his court.

Disservice to the public

Based on the recommendation of the Commission, the Louisiana Court removed a non-lawyer judge for failing to comply with the Court's order to pay a civil penalty for violation of financial reporting requirements. *In re Myers*, 189 So. 3d 1056 (Louisiana 2016). On December 4, 2012, the Court had imposed a \$1,500 civil penalty on the judge for a willful and knowing violation of the financial reporting requirements for 2010. The penalty was to be paid no later than 30 days after the judgment became final. The Commission repeatedly tried to contact the judge after that deadline, but she did not respond or pay the penalty.

The Court concluded:

A judgment issued by a judicial officer who refuses to respect the law or an order of a court will not be respected. Allowing a judicial officer, who refuses to follow the law and to abide by an order of this court, to remain in office would be a disservice to the public, to the litigants that appear before that judicial officer, and to our system of justice. Multiple opportunities have been afforded to this justice of the peace to avoid this result. However, she has failed to provide an explanation for her recalcitrance to consider in mitigation. This court cannot countenance a judicial officer who, although given every opportunity to avoid being sanctioned, ignored all attempts to resolve this matter.

Aggression and bigotry

Agreeing with the recommendation of the Commission on Judicial Performance, the Mississippi Supreme Court removed a former judge, and fined him \$1,000, for physically assaulting a mentally disabled African-American man and directing racial slurs toward him at a public event. *Commission on Judicial Performance v. Weisenberger*, 201 So. 3d 444 (Mississippi 2016). Three justices dissented from the removal because the judge had not been re-elected and was no longer in office.

On May 8, 2014, the judge was directing traffic and assisting with parking at the Canton Flea Market. He was dressed in khaki battle dress uniform and a dark blue shirt that said “Madison County Justice Court” with the state seal embroidered on it, giving him the appearance of a deputy sheriff or security officer.

A deputy sheriff observed then-23-year-old Eric Rivers, who was mentally disabled, inappropriately touching a black female and ordered Rivers to leave the area, walking with him to ensure that he left. Later that day, the deputy again saw Rivers inappropriately touching other black females and again directed him to leave the area. The deputy did not arrest Rivers, and no victims filed charges against him. After the second encounter, the deputy used his radio to alert other security staff about Rivers’s presence. The judge heard the radio transmission.

Subsequently, the judge encountered Rivers. The judge slapped Rivers in the back of the head, called him a “n*****,” and directed him to run in the direction that the judge indicated.

The Court noted that the judge had not been hired to conduct security and had willingly chosen not to wait for a security guard or law enforcement officer when he saw Rivers. Instead, it stated, “he purposefully and intentionally interfered in the situation . . . , using aggression and bigotry.” Stating the evidence showed Rivers’s mental disability was apparent as soon as he spoke, the Court found the judge’s actions were inexcusable, clearly willful, “and warranted public outrage.” The Court noted that the event was attended by tens of thousands of people and “in no way occurred in a private setting,” that the court clerk testified that calls about the allegations greatly interfered with court business, and that “knowledge of Weisenberger’s conduct was widespread and included reports in local newspapers, coverage on the local news, radio station discussions, and internet chatter.”

Four removals in Pennsylvania

The Pennsylvania Court of Judicial Discipline removed four former judges in 2016, all four of whom had been charged with crimes and three of whom had been convicted.

The Court removed one former judge based on his no contest plea to two state charges of official oppression for taking advantage of his official capacity by demanding that a woman model lingerie at her residence in exchange for vacating her outstanding fines and costs and by engaging in unwanted sexual contact with another woman. *In re Joy*, Opinion (October 7, 2016); Order (Pennsylvania Court of Judicial Discipline November 29, 2016) (<http://tinyurl.com/zifztl>).

* * *

Judge Joseph O’Neill and Judge Michael Sullivan were two of the judges on the Philadelphia Traffic Court who were indicted in 2013 on federal felony charges, including wire fraud and mail fraud, based on the court’s practice of giving special consideration to defendants who were politically connected and to family members and friends of traffic court judges and court employees. Prior to trial, Judge O’Neill resigned and pled guilty to two counts of lying to a federal agent. Based on that guilty plea, the Pennsylvania Court of Judicial Discipline removed him from office. *In re O’Neill*, Opinion and order (Pennsylvania Court of Judicial Discipline October 27, 2016) (<http://tinyurl.com/jzf9lar>).

Following trial, Judge Sullivan was acquitted on all criminal charges. Nevertheless, the Court removed him for participating in the special consideration practice. *In re Sullivan*, Opinion (January 14, 2016), Amended opinion and order (Pennsylvania Court of Judicial Discipline May 12, 2016) (<http://tinyurl.com/hsvn2xz>). Two members of the Court dissented, noting that the judge had no formal legal education and “simply went along with what was a well-established, court-wide and systemic approach to adjudicating cases.” However, the majority of the Court concluded:

It cannot be reasonably disputed that Judge Sullivan entered into a system marred by corruption. However, rather than refuse to participate in this system, he simply fell into line, willfully engaging in the same corrupt practices as other [Philadelphia Traffic Court] judges. It was his conscious decision to participate that resulted in his indictment, the public criminal trial, and the revelation of additional facts about his role in sending and receiving ex parte requests to obtain more favorable outcomes for those persons personally or politically connected to [Philadelphia Traffic Court] judges. A more lengthy formal legal education would not likely have changed the result or provided what was needed — the willingness to stand up for what was right and buck a corrupt tide. His oath of office required no less.

* * *

Based on stipulated facts, the Pennsylvania Court removed a former judge and ordered him ineligible to hold judicial office in the future following his guilty plea in federal court to one count of mail fraud and one count of honest services wire fraud, both felonies, and his disbarment. The judge had resigned at the time of his guilty plea. The Judicial Conduct Board's complaint described the judge's ex parte requests to two other judges for favors for campaign supporters that were the basis for the criminal charges. *In re Waters*, Opinion and order (Pennsylvania Court of Judicial Discipline January 12, 2016) (<http://tinyurl.com/h48c4zo>). ★

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Inappropriate e-mails in Pennsylvania ***Top judicial ethics and discipline stories in 2016***

In 2016, for the third time in three years, a justice of the Pennsylvania Supreme Court resigned or retired following conviction of a crime or during a judicial misconduct investigation. (In early 2013, Justice Joan Orié Melvin resigned a month after she was convicted on state charges of using state employees in her judicial election campaigns. In late 2014, Justice Seamus McCaffery retired while the Judicial Conduct Board was investigating allegations against him, including allegations he had exchanged hundreds of sexually explicit e-mails with attorneys in the Office of Attorney General.)

In December 2015, the Board filed a complaint alleging that Justice Michael Eakin committed misconduct by exchanging e-mails with attorneys and other judges that “someone of reasonable sensitivities would find offensive” and that were so extreme as to bring the judicial office into disrepute. The Court of Judicial Discipline suspended Justice Eakin with pay pending proceedings on the complaint.

In March 2016, Justice Eakin filed a motion to present a mediated settlement. After the Court denied the motion, Justice Eakin resigned.

Later in March, based on stipulations of fact in lieu of trial, the Court of Judicial Discipline fined former justice Eakin \$50,000. *In re Eakin*, Opinion (Court of Judicial Discipline March 24, 2016) (<http://tinyurl.com/hmvjdc5>). Addenda to the Court's opinion described in detail the over 140 e-mails from 2008 to 2014 that were the basis for the finding of misconduct.

The justice used his Commonwealth-issued computer equipment to send and receive e-mails from a personal, web-based, yahoo e-mail address. The address identified him not by name or judicial title but as “John Smith.” The people who sent e-mails to or received e-mails from the address knew it was Justice Eakin’s address.

The justice received “blast e-mails” from an attorney friend that contained pictures of nude women, sexually-suggestive themes, gender stereotypes, homophobic content, socioeconomic stereotypes, violence towards women, racial humor, ethnically-based humor, and stereotypes of religious groups. The justice also communicated by e-mail with a group of men who went on golfing vacations together, played fantasy football, and engaged in other social activities. Some of the e-mails from the group included photographs of nude or semi-nude women; video clips of comedic skits that had sexually-suggestive themes; photographic slide shows of faux “motivational posters;” and jokes based on negative gender stereotypes, homophobic content, socioeconomic stereotypes, violence towards women, race or ethnicity, or stereotypes of religious groups. The justice sent one e-mail to the golfing group that included a photograph of a semi-nude woman and sent approximately 17 other e-mails to the group with gender and ethnic stereotypes or inappropriate and chauvinistic statements. In particular, the Court noted three e-mail threads between the justice and a deputy attorney general in which the justice talked about judicial employees. The Court described another e-mail about a trip the golfing group was taking that would apparently include a visit to a strip club. In that e-mail, the justice wrote:

[Y]ou guys sound like a bunch of women, worrying about offending and being misunderstood and falling all over each other thanking everyone and getting misty eyed! Jeezus, boys, is it a menstrual [sic] thing? . . . Snap the hell out of it!!!

. . . New Judge [B.] will find [out] a judge has to go out of state to see boobs. New Dad [S.] will go unless he knocks Momma up again. [S] can spend an extra hour in the OR and pay for all of us!! I’m in.

I’ve got a stake of fifty ones and a titty-deficit that needs cured.

Emphasizing that the justice’s conduct “drastically damaged the reputation of the state judiciary” and “dramatically lessened public confidence in the integrity and impartiality of the entire Judiciary,” the Court concluded:

Whether labelled misogynistic, racially-biased, biased against national origin, or biased toward sexual orientation, they represent a list of topics which should give any jurist pause. The list also corresponds, in a number of instances, with categories protected by the laws of the United States and of our Commonwealth. Significantly, they could cause citizens to wonder whether their cases received unbiased consideration by Respondent, something that we find abhorrent to the principles to which Respondent has ostensibly dedicated his entire professional career. A reasonable inference that Respondent lacked the impartiality required of judges also fundamentally lessens public confidence in the judiciary.

The Court acknowledged the justice’s expectation that the e-mails would remain private but concluded the e-mails demonstrated a misjudgment, both in the judge’s understanding of how electronic communications work and the substantive content of those communications.

In subsequent developments, noting “the recent series of misconduct claims against judges regarding their use of electronic communications” and questions from “[m]any judicial officers at all levels of Pennsylvania’s judiciary,” in November, the Board released a statement of policy that describes “the Board’s tentative intention with respect to how it will interpret and enforce the Code, the Rules, and the Constitution with respect to allegations of judicial misconduct stemming from the use of electronic communications in the future” (<http://tinyurl.com/gsbfcqg>). Later in November, the Pennsylvania Attorney General released a report by a law firm hired to investigate e-mails among

prosecutors, judges, and others involved in the criminal justice system that were found on the Attorney General's server. In addition to other findings, the investigation determined that two supreme court justices and three other judges sent more than three inappropriate e-mails each, and the Attorney General stated that the judicial officers were reported to the Board. In a press release, the Board stated, "Consistent with its obligations under the Pennsylvania Constitution, including its obligations of confidentiality, the Board will conduct an independent examination" "in conformity with its recently announced 'Statement of Policy Regarding Electronic Communications' and will take any and all steps necessary to preserve the integrity of the judiciary." ★

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What they said to litigants that got them in trouble

- "For your consideration, there's a blood drive outside and if you do not have any money and you don't want to go to jail, as an option to pay it, you can give blood today." Judge presiding over docket to recover unpaid court-ordered costs, fees, fines, and restitution. *Wiggins* (Alabama Court 2016) (<http://tinyurl.com/z54x3m3>) (censure).
- "I feel sorry for everybody from here on now." Judge just after holding a self-represented defendant in contempt for her "attitude" and just before holding a second self-represented defendant in contempt for his "insolent behavior." *Free*, 199 So. 3d 571 (Louisiana 2016) (one-year suspension without pay for this and other misconduct).
- "If you get busted for this again, I'll tell you how amusing you won't find it. Unless you like those young boys at the jail. I understand they can be very friendly to young boys like you." Judge to criminal defendant. *Popovich* (Kentucky Commission 2016) (<http://tinyurl.com/zr6upnm>) (reprimand for this and other comments).
- "Brilliant, isn't he? What he's got doesn't ever go away." Judge about a defendant. *Popovich* (Kentucky Commission 2016) (<http://tinyurl.com/zr6upnm>) (reprimand for this and other comments).
- "What, your skin was ashy? You were ashy trying to get your skin right with some Aveeno?" Judge to defendant who stole lotion from Wal-Mart, causing audible laughter in the courtroom. *Free*, 199 So. 3d 571 (Louisiana 2016) (one-year suspension without pay for this and other misconduct).
- "Has anything good ever come out of drinking other than sex with a pretty girl?" Judge during sentencing. *Dooley*, 376 P.3d 1249 (Alaska 2016) (censure for this and other comments).
- "What you've done with this young girl, it's a strange thing, routinely done in Afghanistan where they marry 6-year-old girls. In our society, and in the society of the local tribal communities, supposed to be totally forbidden." Judge during sentencing. *Dooley*, 376 P.3d 1249 (Alaska 2016) (censure for this and other comments).

- “This was not someone who was, and I hate to use the phrase, ‘asking for it.’ There are girls out there that seem to be temptresses. And this does not seem to be anything like that.” Judge during a sentencing for sexual abuse of a 14-year-old girl. *Dooley*, 376 P.3d 1249 (Alaska 2016) (censure for this and other comments).
- “You should be guilty as charged but [the prosecution is] willing to amend it. You can take it or leave it if you want to have a trial. I don’t see how you can win it.” Judge to defendant at an arraignment. *Popovich* (Kentucky Commission 2016) (<http://tinyurl.com/zr6upnm>) (reprimand of former judge).
- “I’m sorry folks, but I can’t slap her around to make her talk louder.” Judge to jury about victim during a domestic assault trial. *Dooley*, 376 P.3d 1249 (Alaska 2016) (censure for this and other comments).
- “You disobeyed a court order knowing that this was not going to turn out well for the State.” Judge finding the victim in a domestic violence case in contempt for failing to respond to the prosecution’s subpoena to testify at trial. *Collins*, 195 So. 3d 1129 (Florida 2016) (reprimand).
- “Your husband must be rolling over in his grave right now,” and, “You need more than psychological help. I wish I could do more to you. You don’t seem like you would do very well in jail. I just arrested someone earlier today for violating a peace bond.” Judge to recent widow in peace bond proceedings brought by her adult stepchildren. *Laiche*, 198 So. 3d 86 (Louisiana 2016) (removal for this and other misconduct).
- “I don’t know what the hell you two are thinking, but get it together. All of you,” and, “I don’t give a crap about any of you.” Judge to parents in a custody hearing. *Hancock* (Arizona Commission May 12, 2016) (<http://tinyurl.com/jnsc5ck>) (reprimand).
- “You obviously don’t care about the child as much as we do. I want to protect this child. You obviously don’t.” Judge to a pregnant criminal defendant who was receiving methadone treatment. *Popovich* (Kentucky Commission 2016) (<http://tinyurl.com/zr6upnm>) (reprimand of former judge).
- “You need counseling badly, because your kids are suffering. Not because of him. Because of you. Because of you. Because you don’t see the truth in things. . . . I don’t believe your children are afraid of their father. I think they’re afraid of you. If they’re afraid of anybody, it’s you.” Judge to mother in family court case. *Stacey* (Minnesota Board 2016) (<http://tinyurl.com/jlx4sgv>) (reprimand for this and other comments).
- “Children don’t dump on their parents. It’s elicited, especially with a nine-year-old. [B.B.] and his mother are pumping this child for dirt on her mother. You should be ashamed. You should be truly ashamed, sir.” Judge to father in family court case. *Stacey* (Minnesota Board 2016) (<http://tinyurl.com/jlx4sgv>) (reprimand for this and other comments).
- “I’ll be right back. Just continue without me,” and, “I’ve never done that before. It felt good.” Judge before walking out of the courtroom and then after returning. *Stacey* (Minnesota Board 2016) (<http://tinyurl.com/jlx4sgv>) (reprimand for this and other comments).
- “I also have a medieval Christianity that says if you violate an oath, you’re going to hell. You all may not share that, but I’m planning to populate hell.” Judge about perjury in a civil trial with unrepresented litigants. *Dooley*, 376 P.3d 1249 (Alaska 2016) (censure for this and other comments).

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Corruption and cooperation in Arkansas

Top judicial ethics and discipline stories in 2016

In a statement of allegations filed in November 2015, the Arkansas Judicial Discipline and Disability Commission alleged that, in addition to other misconduct, Judge Joseph Boeckmann had used his judicial status and influence “to insinuate compliance” by young Caucasian male litigants with “his personal and sexual desires.” According to the statement, Boeckmann offered certain defendants in traffic or criminal citation cases community service or “substitutionary sentences;” he would instruct the men to pick up cans along roads or at his home and photograph them as they were bending over, keeping “these photographs of male litigants’ buttocks in his home for his own personal use.” In addition, the statement alleged that, when some of the defendants went to the judge’s home or office as directed to perform community service, he solicited sexual relations with them in exchange for reductions of or dismissals of their court fines and costs. In his answer, the judge denied the allegations. (Boeckmann agreed not to sit while the allegations were pending, and the Arkansas Supreme Court appointed a judge to handle his docket.)

More victims came forward after the Commission’s allegations were reported in the news media, and the Commission added more examples of the judge appearing “to act as employer, financier, and, on occasion, intimate partner of some defendants appearing before him” in an amended statement filed in January 2016. Some of the allegations related to payments by Boeckmann to defendants who appeared before him and telephone communications by him to witnesses during the Commission investigation. Boeckmann denied the allegations in the amended statement.

In early May, the Commission notified Boeckmann’s attorney that it might file a second amended statement of allegations based on additional evidence, including thousands of photographs and additional witnesses who had provided statements regarding sexual misconduct by Boeckmann when he was a private attorney and a deputy prosecuting attorney. On May 9, the Commission announced Boeckmann’s resignation and permanent removal and concluded its case against him. *Press release (Boeckmann)* (Arkansas Commission on Judicial Disability and Discipline May 9, 2016) (<http://tinyurl.com/gwfe65v>). In its press release, the Commission thanked several state agencies that had assisted in its investigation, including the cyber-crimes unit of the Arkansas Attorney General and the state police.

In October, Boeckmann was indicted by a federal grand jury on charges he used his official position “to obtain personal services, sexual contact, and the opportunity to view and to photograph in compromising positions persons who appeared before him in traffic and misdemeanor criminal cases in exchange for dismissing the cases.” The indictment is based on the testimony of nine men who were 16 to 22 at the time they appeared before Boeckmann from 2009 to 2015. There are eight counts of wire fraud, two counts of witness tampering, one count of federal program bribery, and 10 counts of violating the Travel Act. In its press release, the U.S. Department of Justice noted that the Commission and the state police had assisted the FBI in its investigation.

The Commission thanked other agencies again when it announced the removal of Judge Timothy Parker based on his resignation on the last day of 2016. *Parker*, Letter of removal from office (Arkansas Judicial Discipline and Disabilities Commission December 31, 2016) (<http://tinyurl.com/z7f7erv>). The press release cited the county sheriff, the police chief, the state attorney general for the cyber-crimes unit, the prosecutor coordinator’s office, the special prosecuting attorney, and many court staff, public officials, legal professionals, and witnesses.

The judge admitted allegations that he performed probable cause determinations in cases involving friends or former clients, releasing them on their own recognizance. However, the judge contested other allegations on which he would have faced disciplinary charges if his resignation had not rendered them moot. The other allegations included that he set bond for women or their family members or friends in exchange for sexual favors and traded cash and prescription pills for sexual favors or money. ★

GO BACK: INSIDE THE ISSUE

What they said to attorneys that got them in trouble

- “If I had cash, I’d give you a tip.” Judge to female assistant district attorney when she brought him coffee after he handed her his empty coffee mug. *Bergeron* (California Commission 2016) (<http://tinyurl.com/hnmungk>) (admonishment for this and other misconduct).
- “This conversation never happened.” Judge to deputy district attorney after he engaged in an ex parte communication with her. *Scott* (California Commission 2016) (<http://tinyurl.com/jq7bhng>) (admonishment).
- “Sneaky snake.” Judge about an attorney who filed a notice of transfer. *Davenport* (Tennessee Board 2016) (<http://tinyurl.com/zjwe6eg>) (reprimand).
- “Don’t give me any BS about you have no control over the police department You can certainly tell a detective or police officer investigating that on the orders of the DA’s Office, no arrest is to be made until it is authorized by your office.” Judge threatening to hold an assistant district attorney in contempt, to declare a mistrial with prejudice, and to impose sanctions if the defendant was arrested, before a trial concluded, for threatening a witness. *Gary* (New York Commission 2016) (<http://tinyurl.com/zxy5yge>) (admonishment).
- “Frankly, I was a little surprised that you still want him to plead to a sex crime when she is apparently not upset at the whole incident, from her testimony.” Judge to district attorney about defendant charged with engaging in sexual intercourse with a 14-year-old girl. *Hafner* (New York Commission 2016) (<http://tinyurl.com/z56ebje>) (admonishment for this and other comments).
- “Do whatever you want. This is nothing but a cat fight, slinging mud. I am no longer participating in it. Have at it.” Judge to attorneys in family court case. *Stacey* (Minnesota Board 2016) (<http://tinyurl.com/jlx4sgv>) (reprimand for this and other comments).
- “I remember you . . . I recuse myself from your cases . . . you are the gentleman who yelled at the lady who is now my wife.” Judge to attorney in court in an accusatory and aggressive tone. *Castillo* (Arizona Commission 2016) (<http://tinyurl.com/z5j5ujn>) (reprimand).
- “[Appealing would make you look like an] idiot and a baby” and would be “pathetic,” “dumb,” “silly,” and a waste of court resources. Hearing master to assistant district attorney during a

hearing after refusing to issue a bench warrant for an errant parent. *Beller* (Nevada Commission 2016) (<http://tinyurl.com/hsmyx3g>) (reprimand).

- “And if a prosecutor, someone with the AG’s office, wants to put that person’s case on their disingenuous list of cases that are pending sentencing, that’s a lie from the pit of hell, and that is a fraud on the Fourth [District Court of Appeal].” Judge in court about a list of cases that was the subject of a motion to disqualify. *Contini*, 205 So.3d 1281 (Florida 2016) (<http://tinyurl.com/zb6ewca>) (reprimand).
- “They don’t indict people. They leave them sit in the jail forever. For whatever reason, I don’t have any clue.” Judge angrily criticizing district attorney for failing to move cases expeditiously. *Hafner* (New York Commission 2016) (<http://tinyurl.com/z56ebje>) (admonishment for this and other comments).
- “So, if you choke them, that’s a felony. If you punch them in the eye, that’s a misdemeanor. . . . If you punch them in the eye and then choke them, they’ll never know you choked them. . . . That’s some crazy stuff, man. It’s like they want to legislate for every little thing. . . . Oh, you touched the right finger? That’s a different thing there now. Oh you grabbed her by the left arm, that’s a different crime. Crazy. And, I say that, but women beat upon the men too. I see that a lot now days.” Judge to assistant district attorney in domestic violence case. *Free*, 199 So. 3d 571 (Louisiana 2016) (one-year suspension without pay for this and other misconduct).
- “If you’re doing the best you can, you should be put out of business.” Judge to an attorney from a legal services agency about an error in papers the agency had prepared. *Simon*, 63 N.E.3d 1136 (New York 2016) (removal for this and other misconduct).

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Public outrage in California Top judicial ethics and discipline stories in 2016

On June 2, 2016, Judge Aaron Persky sentenced Stanford University student-athlete Brock Turner to six months in jail (plus three years’ probation and lifetime sex offender registration) following his conviction of sexually assaulting an unconscious woman behind a dumpster outside a college party. As the California Commission on Judicial Performance noted, the sentence “was widely criticized as being too lenient, and triggered significant public outrage and media coverage.” A campaign to recall Judge Persky was started. The Commission received thousands of complaints.

In December, the Commission announced that it was closing its investigation of Judge Persky (<http://tinyurl.com/zge9ayj>). Usually, the Commission’s decision to close an investigation would be confidential pursuant to the state constitution, but the constitution creates an exception that allows the Commission to issue an explanatory statement, and the Commission used that exception “[b]ecause Judge Persky’s sentencing of Turner and the complaints to the commission received widespread public attention”

Noting that “[m]any complainants asked the commission to ensure that the sentencing in this case matches both the crime and the jury’s verdict and to be sure that justice is done,” the

Commission emphasized that it “is not a reviewing court — it has no power to reverse judicial decisions or to direct any court to do so — irrespective of whether the commission agrees or disagrees with a judge’s decision. It is not the role of the commission to discipline judges for judicial decisions unless bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any purpose other than the faithful discharge of judicial duty is established by clear and convincing evidence.”

In its statement, the Commission analyzed the judge’s comments during sentencing, compared the case to cases in which other judges have been reversed or disciplined for making statements that reflect bias, and evaluated the judge’s sentencing decisions in other cases. The Commission concluded “that there is not clear and convincing evidence of bias, abuse of authority, or other basis to conclude that Judge Persky engaged in judicial misconduct warranting discipline.” It explained:

First, the sentence was within the parameters set by law and was therefore within the judge’s discretion. Second, the judge performed a multi-factor balancing assessment prescribed by law that took into account both the victim and the defendant. Third, the judge’s sentence was consistent with the recommendation in the probation report, the purpose of which is to fairly and completely evaluate various factors and provide the judge with a recommended sentence. Fourth, comparison to other cases handled by Judge Persky that were publicly identified does not support a finding of bias. The judge did not preside over the plea or sentencing in one of the cases. In each of the four other cases, Judge Persky’s sentencing decision was either the result of a negotiated agreement between the prosecution and the defense, aligned with the recommendation of the probation department, or both. Fifth, the judge’s contacts with Stanford University [he had been a student-athlete there] are insufficient to require disclosure or disqualification. ★

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What they said to or about judges, court staff, police officers, or public officials that got them in trouble

- “I’m sure you are just as busy with your physical therapy, workout time and all. I don’t appreciate you checking on me — I don’t work for you and never will. I was elected by the citizens of this county, unlike you. I would hope you and your pals upstairs would have better things to do with your time as Superior Court Judges than keep a journal on another Judge’s comings and goings. Pathetic. . . . get a life. I look forward to running against you for P.J. The Court will be a lot better off without you in some position of assumed power. Good luck in the campaign. Have a really nice night.” Judge in e-mail responding to assistant presiding judge’s inquiry about where he had been when she was looking for him to discuss covering the next day’s calendar. *Trice* (California Commission 2016) (<http://tinyurl.com/jrl6wb3>) (censure for this and other misconduct).

- “If I talk percentages, the answer would be no. We all know that. She’s very rarely there.” Judge when a defendant asked if the other judge was available. *In re Popovich*, (Kentucky Commission 2016) (<http://tinyurl.com/zr6upnm>) (reprimand for this and other comments).
- “Terrible minus ten” and don’t “listen to those f***s from Syracuse.” Judge after observing a new judge’s first arraignment and when the new judge said he had followed the procedures he learned in training. *Simon*, 63 N.E.3d 1136 (New York 2016) (removal for this and other misconduct).
- Get your “f***ing a** in the chair.” Judge to his co-judge when he was 20 minutes late one day. *Simon*, 63 N.E.3d 1136 (New York 2016) (removal for this and other misconduct).
- “Have a stroke and die.” Judge to co-judge who was trying to stop him from having an intern arrested for contempt. *Simon*, 63 N.E.3d 1136 (New York 2016) (removal for this and other misconduct).
- “Get out! You’re not supposed to be here!” Judge in a rage to an intern after grabbing his arm. *Simon*, 63 N.E.3d 1136 (New York 2016) (removal for this and other misconduct).
- “She’s a f***ing b***h. Why would I even talk to her?” Judge to police chief, village attorney, and police officer as they tried to calm him by suggesting he talk to the mayor about the hiring of an intern. *Simon*, 63 N.E.3d 1136 (New York 2016) (removal for this and other misconduct).
- Part of the “Haitian mafia,” “the mayor’s clerk,” “the pretend clerk,” “the so-called clerk,” “traitor,” and the “mayor’s pet.” Judge referring to court clerk. *Simon*, 63 N.E.3d 1136 (New York 2016) (removal for this and other misconduct).
- “Bring your toothbrush, you’re going to jail in the morning.” Judge in call to police chief’s home. *Simon*, 63 N.E.3d 1136 (New York 2016) (removal for this and other misconduct).
- “You look nice today.” Judge in a note he showed to a family specialist while she was testifying. *Portelli* (New Jersey 2016) (<http://tinyurl.com/gqkweg>) (reprimand for this and other comments).

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Facebook fails

Top judicial ethics and discipline stories in 2016

Judges got in trouble for injudicious, off-the-bench comments before recent revolutions in on-line communications, but the greater temptation to vent posed by the new-fangled social media and the greater potential for venting to “go viral” were illustrated in several cases in 2016.

Dropping his First Amendment defense to charges brought by the Kentucky Judicial Conduct Commission, a judge agreed to a 90-day suspension without pay for (1) criticizing the county commonwealth’s attorney, the public defender, and defense attorneys on Facebook while an appeal of his order dismissing an all-white jury panel was pending; (2) criticizing on Facebook the victims in a criminal case; and (3) criticizing a court of appeals decision in a public statement. *In re Stevens*,

Agreed order of suspension (Kentucky Judicial Conduct Commission August 8, 2016) (<http://tinyurl.com/jdea6qv>).

(1) On November 18, 2014, the judge dismissed a jury panel in a criminal case, claiming the panel did not represent a fair cross-section of the community. The Kentucky Attorney General, on behalf of County Commonwealth Attorney Thomas Wine, filed a motion for certification of law with the Kentucky Supreme Court to determine, among other issues, whether a judge has the authority to dismiss a jury panel without providing evidence of the systemic exclusion of a class of persons. A TV station posted an article on the case.

In numerous comments on Facebook following that article, the judge criticized the commonwealth attorney and accused him of advocating for all-white jury panels. For example, he posted, "But whatever you believe the lack of representation is, it is clear that all-white juries are not in the best interest of a community that is 20% black and where the jail population stands at 55% black... And that is what Tom Wine is trying to do."

In comments on Facebook, the judge also criticized the public defender and criminal defense attorneys for not publicly supporting him in his dispute with the commonwealth attorney. For example, he posted an open letter that stated:

Dear Counsel: Where are you? You asked me to dismiss the jury panel consisting of 40 white jurors and 1 black juror. Yet you are silent. You are the ones who regularly ask me to set aside jury panels for lack of racial diversity. Yet you are silent. The Jefferson Commonwealth's Attorney is for all-white jury panels. The people are for racially diverse jury panels. What are you for? Thank you for your consideration. Judge Olu Stevens.

The judge made similar comments about the commonwealth attorney and defense attorneys during a presentation to the Louisville Bar Association. The judge's comments were made while the case was pending before the Kentucky Supreme Court.

(2) On February 4, 2015, the judge sentenced a defendant who had pled guilty to felony charges of robbery and burglary. In their victim impact statement, the victims had stated that their three-year-old daughter expressed fear of black men following the defendant's invasion of their home. During the hearing, the judge stated that he was offended by that statement. Following the hearing, the judge made several comments on Facebook about the case while the defendant's probation was still pending. For example, he posted:

Do three year olds form such generalized, stereotyped and racist opinions of others? I think not. Perhaps the mother had attributed her own views to her child as a manner of sanitizing them.

Let me be clear. The statement played absolutely no role in the sentencing decision and the commonwealth disavowed the statement. Needless to say, I was deeply offended, however, that this statement was put forth for the purpose of persuading me to impose a lengthy prison sentence. Had the perpetrator been white, I doubt it would have resulted in such gross generalizations. The race of a perpetrator of a crime is not a reason or an excuse to fear an entire race of people.

We must stand against it in whatever form. As a judge I do my work without regard to race. It is incumbent on me to confront and dispose of language based on racism and stereotypes. We should all do our part to eradicate such nonsense. And let me be clear, silence does nothing to contribute. It simply sends a message that such views are acceptable and fear somehow excuses wrong.

(3) On March 16, 2016, the Court of Appeals granted the commonwealth attorney's petition for a writ of prohibition in a different case barring the judge from dismissing future jury panels absent a showing by the defendant that the fair-cross-section requirement was not met or until further direction from the Kentucky Supreme Court and finding that the judge had violated an order granting

intermediate relief when he subsequently dismissed the jury panel in that case. In response, the judge issued a public statement criticizing the decision.

* * *

Accepting a stipulation and joint recommendation, the New York State Commission on Judicial Conduct publicly admonished a judge for making improper public comments on her Facebook account about a matter pending in another court and failing to delete related public comments by her court clerk. *In the Matter of Whitmarsh*, Determination (New York State Commission on Judicial Conduct December 28, 2016) (<http://tinyurl.com/hrd76e3>).

The judge sits on the Morristown Town Court. On March 3, 2016, a felony complaint was filed in the Canton Town Court alleging David VanArnam, who was running for the Morristown town council, had filed nominating petitions in which he falsely swore that he personally witnessed the signatures on the petitions.

In a post on her Facebook account, the judge commented that she felt “disgust for a select few,” that VanArnam had been charged with a felony rather than a misdemeanor because of a “personal vendetta,” that the investigation was the product of “CORRUPTION” caused by “personal friends calling in personal favors,” and that VanArnam had “[a]bsolutely” no criminal intent. The judge also stated, “When the town board attempted to remove a Judge position — I stood up for my Co-Judge. When there is a charge, I feel is an abuse of the Penal Law — I WILL stand up for DAVID VANARNAM.” The judge also posted a link to a news article reporting when the charge against VanArnam had been dismissed.

The judge’s post about the VanArnam case was shared at least 90 times by other Facebook users. A local news outlet posted an article on its web-site reporting on the judge’s Facebook comments and re-printed her post.

The judge also clicked the “like” button next to some of the comments to her post, including a comment stating that the charges against VanArnam were “an abuse of our legal system” and “uncalled for,” a comment criticizing the district attorney, and a comment by her husband, stating, “This is what’s wrong with our justice system.”

The judge had intended her posts to be seen only by her 352 Facebook “friends.” However, a few years earlier, she had set her Facebook privacy settings to “public” for an unrelated reason, and, at the time of her posting about the VanArnam case, her privacy settings were still set to public although she did not realize that.

The Morristown Town Court Clerk posted on the judge’s Facebook page, “Thank you Judge Lisa! You hit the nail on the head.” The judge did not delete the court clerk’s comment, which was viewable by the public.

On March 28, the judge removed all posts concerning VanArnam from her Facebook page after the District Attorney questioned the propriety of her comments in a letter and requested her recusal. Soon after receiving that letter, the judge recused from all matters involving the district attorney’s office.

The Commission stated:

Comments posted on Facebook are clearly public, regardless of whether they are intended to be viewable by anyone with an internet connection or by a more limited audience of the user’s Facebook “friends.” Even such a “limited” audience, we note, can be substantial, and to the extent that such postings can be captured or shared by others who have the ability to see them, they cannot be viewed as private in any meaningful sense. . . .

Regardless of respondent’s intent, her comments — and her “likes” of comments criticizing the District Attorney that were posted in response to her message — conveyed not only respondent’s personal

view that the prosecution was unjust, but the appearance that she was impugning the integrity of the prosecution and endorsing others' criticism of the District Attorney's office and the District Attorney personally. Her statements, which were viewable online for 15 days and were reported by the media, were inconsistent with her duty to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" . . . and resulted in her recusal from all matters involving the District Attorney's office. Moreover, by referring to her judicial position in the same post (stating that she had once "stood up for my Co-Judge"), respondent lent her judicial prestige to her comments, which violated the prohibition against using the prestige of judicial office to advance private interests . . .

In addition, noting that a judge is required to require court personnel subject to the judge's direction and control to also abstain from public comment about pending proceedings, the Commission stated that the "comments posted by respondent's court clerk on respondent's Facebook page were also objectionable."

* * *

Based on an agreement for discipline by consent, the South Carolina Supreme Court suspended a judge for six months without pay for his Facebook posts about a case, political matters, and a fundraiser for a local church. *In the Matter of Johns*, 793 S.E.2d 296 (South Carolina 2016). The judge's Facebook account identified him as the probate court judge for Oconee County, and the account and all of his posts were accessible to all members of Facebook.

Z.H.'s parents had filed a wrongful death suit on behalf of his estate against the police department. The case was settled for \$2,150,000. The settlement received extensive press coverage.

While the administration of the estate was pending before the probate court, the judge expressed his opinion about the settlement on Facebook, posting: "In the end it's all about the money. Always. Unfortunately, I see it EVERYDAY." The judge later added: "Once ck is in hand, they'll disappear."

The judge also made extensive political posts on Facebook, including ones in which he appeared to endorse a presidential candidate, and engaged in fund-raising for a local church in a post.

* * *

See also *In the Matter of Archer*, Final judgment (Alabama Court of the Judiciary August 8, 2016) (<http://tinyurl.com/jjx9cdj>) (six-month suspension for sexually explicit Facebook relationship with a woman the judge met in his official capacity); *Commission on Judicial Performance v. Clinkscales*, 191 So. 3d 1211 (Mississippi 2016) (public reprimand of a former judge for endorsing a political candidate on social media, in addition to other misconduct); *Public Reprimand of Uresti and Order of Additional Education* (Texas State Commission on Judicial Conduct October 11, 2016) (<http://tinyurl.com/zwtm3ql>) (public reprimand for Facebook posts that promoted the financial interests of a relative and a former judge, in addition to other misconduct). ★

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What they said that abused the prestige of office

- “I am a judge in this county.” Judge to the police officer who stopped him for speeding and arrested him on suspicion of driving while intoxicated. *Glicker* (Texas Commission 2016) (<http://tinyurl.com/jjnvfmm>) (admonishment).
- “I have a public official job that this will kill me. It will become very bad. I can’t tell you because if I tell you, I can get in trouble for that. But I won’t. I was on the phone with my wife, that’s why I was swerving. This will kill me more than the average guy.” Judge to the trooper who stopped him for drunk driving. *Baptista* (New Jersey 2016) (<http://tinyurl.com/h3fgfwl>) (censure).
- “Will you just take me home and forget about the drinking and driving?” Judge to the police officer who stopped him for operating while intoxicated. *Garrard*, 56 N.E.3d 24 (Indiana 2016) (reprimand).
- “If I see you again, I’m going to make sure that the county sheriff takes you to jail.” Judge to the driver he had had the police pull over after she passed him. *Brady* (Texas Commission 2016) (<http://tinyurl.com/js9prrg>) (warning).
- “It’s okay, I’m a judge.” Judge while attempting to take a pistol into a county-owned building, in violation of a local law. *Moskos* (New York Commission 2016) (<http://tinyurl.com/z8vdynt>) (admonishment).
- “Well, actually, it is.” Judge to the judge presiding over her personal case when she called and he asked, “[I]t’s not about this, your case, is it?” *Dixon* (New York Commission 2016) (<http://tinyurl.com/gotdsjm>) (censure).
- “Eddie Elum from the Massillon Court.” Judge in a phone call urging a landlady to accept a tenant’s late rent payment. *Elum* (Ohio Court 2016) (<http://tinyurl.com/jan32jb>) (one-year suspension).
- “I personally echo the ringing endorsements contained within the many exhibits attached hereto and respectfully request that USF live up to its National Rating as the Second Most Veteran Friendly College in America.” Judge in a letter urging that a defendant over whose case he was presiding in veteran’s court be re-admitted to the University of South Florida. *Holder*, 195 So. 3d 1133 (Florida 2016) (reprimand).
- “I enjoy performing marriage ceremonies” and “make every effort to schedule them.” Part-time magistrate’s web-site for his law practice. *Martinek*, 881 N.W.2d 85 (Iowa 2016) (finding of misconduct, no sanction for former judge).
- “I am incidentally in possession of a hard copy of an email from [an attorney] of your firm to [York County Probate] Register Lovejoy in which [the attorney] snidely referred to me as ‘his eminence.’ If that was not meant to be pejorative or disrespectful of me as a jurist and an ethical violation, I request [the attorney’s] full explanation within 10 days from the date of this letter.” Judge in a letter to counsel regarding a court proceeding in which he was a party. *Nadeau*, 144 A.3d 1161 (Maine 2016) (30-day suspension).

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The U.S. Supreme Court and state judicial disqualification

Top judicial ethics and discipline stories in 2016

The U.S. Supreme Court reiterated the importance of “both the appearance and reality of impartial justice” in state courts just six years after it articulated an objective test for impartiality under the federal due process clause in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). In the 2016 case, the Court vacated a 6-0 decision of the Pennsylvania Supreme Court denying post-conviction relief to a prisoner convicted of first-degree murder and sentenced to death; the Court held that (1) the participation of a justice who had as the district attorney approved seeking the death penalty in the prisoner’s case violated the Due Process Clause of the Fourteenth Amendment and (2) the justice’s failure to recuse was a structural error, not harmless error, that required that the decision be vacated even though his vote was not a deciding vote. *Williams v. Pennsylvania*, 136 S. Ct. 1899 (2016). The Court emphasized:

Bias is easy to attribute to others and difficult to discern in oneself. To establish an enforceable and workable framework, the Court’s precedents apply an objective standard that, in the usual case, avoids having to determine whether actual bias is present. The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, “the average judge in his position is ‘likely’ to be neutral, or whether there is an unconstitutional ‘potential for bias.’”

For a longer discussion of the case, see “Disqualification: Recent cases,” *Judicial Conduct Reporter* (Summer 2016) (<http://tinyurl.com/gks2uda>). ★

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False statements that got them in trouble

- “Yesterday at lunch.” Judge’s false statement about when he last had something to drink when a trooper stopped him for drunk driving. *Baptista* (New Jersey 2016) (<http://tinyurl.com/h3fgfwl>) (censure).
- “I presently occupy, or intend to occupy, the subject property as my principal residence . . .” Judge on a mortgage re-financing application even though she resided at a different property and did not intend to move. *Santiago* (Illinois Commission 2016) (<http://tinyurl.com/z3bf6gz>) (censure).
- “Cannon doesn’t think teenage drinking is serious. What else does he think isn’t serious?” Judicial candidate’s misleading ad criticizing his opponent’s concurring opinion in a court of appeals decision holding that police needed to obtain a warrant before entering a home and searching a party where there was underage drinking. *Tamburrino* (Ohio Court 2016) (<http://tinyurl.com/hty2zb9>) (one-year suspension of former judicial candidate).

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